

**Sign Painters, Decorators and Paintmakers Union
No. 756 and Carpenters District Council of
North Central Texas and Heritage Display
Group of Dallas, Inc. Case 16-CD-148**

March 25, 1992

**DECISION AND DETERMINATION OF
DISPUTE**

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The charge in this Section 10(k) proceeding was filed on June 11, 1991, by Carpenters District Council of North Central Texas (Carpenters), alleging that the Respondent, Sign Painters, Decorators and Paintmakers Union No. 756 (Decorators) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing Heritage Display Group of Dallas, Inc. (Heritage) to assign certain work to employees it represents rather than to employees represented by the Carpenters. A hearing was held on August 29, September 9, and September 20, 1991, before Hearing Officer Paul Blackwell.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The parties stipulated that Heritage is a Texas corporation with a place of business in Dallas, Texas, where it is engaged in the designing, fabricating, and installing of trade show exhibits. During the 12 months prior to this hearing, a representative period, Heritage purchased and received goods valued in excess of \$50,000 directly from sources located outside the State of Texas. We find that Heritage is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

The parties also stipulated that the Decorators and the Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

Heritage operates nationwide, building and erecting displays for clients at conventions and trade shows. Trade shows have a general contractor which oversees the show for the sponsoring group. Typically, Heritage is one of the several contractors performing services for one or more clients at the show.

The events which gave rise to the instant case occurred in April 1991 and were associated with a con-

vention involving the American Association of Petroleum Geologists (AAPG) at the Dallas Convention Center. The AAPG hired Freeman Decorating Company as the general contractor for the show. Heritage had built and was assembling displays for several clients on the floor of the main hall of the convention center.

About April 4, 1991, Heritage brought into the center a number of workers, some of whom were its regular, full-time shop employees and some of whom were temporary employees provided through the Carpenters Union hiring hall only for this show. The Decorators, which has a collective-bargaining agreement with Freeman Decorating, learned of the presence on the convention floor of employees represented by the Carpenters beyond those who were regular employees of Heritage. Thus, Joel Wine, Freeman's general manager, discussed with Decorators Chief Steward Dietra Langley the presence of employees represented by the Carpenters doing overflow work. Wine testified that the use of the extra carpenters violated a rule promulgated by the AAPG that only regular, full-time employees of the exhibitors or their contractors could be used on the floor at the time. According to Wine, this rule required that additional employees had to be obtained through Freeman or directly from the Decorators' hiring hall.

Langley then protested to Heritage's operations manager, Steve Byford, via Ruth Fain, Heritage's show service manager, and Sue Bassey, an employee of Heritage's show service department. Langley also informed Bassey that if the extra employees represented by the Carpenters were not removed from the floor the Decorators would put up a picket line and shut down the show. Byford directed Heritage to remove the extra employees represented by the Carpenters from the job. These employees had been working for about 1 hour. According to Langley, Fain then ordered employees represented by the Decorators for the job.

The Decorators' threat to put up a picket line and shut down the show if the extra employees represented by the Carpenters were not removed from the floor led to the filing of the instant charge.

B. Work in Dispute

The disputed work is the overflow work related to the preparation, erection, dismantling, and preparation for shipment of exhibits at trade shows, conventions, fairs, and like or related activities in the Dallas, Texas area.¹

C. Contentions of the Parties

Decorators contends that its oral agreement with Heritage, employer preference, employer past practice,

¹ The overflow work is the work that cannot be performed by the regular employees of the exhibitors or their contractors.

assignment under the show rules, area and industry practice, relative skills, economy and efficiency of operations, and job impact favor an award of the disputed work to the employees it represents.

Carpenters contends its collective-bargaining agreement as extended by recent negotiations, relative skills, and efficiency and economy of operations favor an award of the disputed work to employees it represents. Carpenters notes that Heritage prefers to have the more highly skilled work awarded to the employees represented by the Carpenters but is agreeable to having the less highly skilled work performed by the employees represented by the Decorators. Carpenters states it would not object to such an award.

D. Applicability of the Statute

Before the Board may proceed with a determination of a dispute under Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

As discussed above, undisputed testimony shows that the Decorators, by Langley, protested to Heritage the presence on the convention floor of the employees represented by the Carpenters who were not regular employees of Heritage. Langley told Heritage that if the extra employees represented by the Carpenters were not removed from the floor the Decorators would put up a picket line and shut down the show.

Based on the above, we find reasonable cause exists to believe that the Decorators engaged in conduct which violated Section 8(b)(4)(D) of the Act. There is no contention and we find that no agreed method for voluntary adjustment of the dispute exists within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. The Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

1. Certifications and collective-bargaining agreements

Neither union has been certified by the Board to represent the employees of Heritage. There is a collec-

tive-bargaining agreement between the Carpenters and Texas Convention Services Association, a multiemployer association of which Heritage is a member. This contract covers shop work performed by the Heritage. It also refers to the

erecting, installing and dismantling on show site of displays manufactured or refurbished by the Employer where the skills, knowledge and expertise of the Carpenter/Millmen are required. Carpenter/Millmen will receive the same rate of pay at the showsite as is paid in the plant.

The contract also provides the following:

The parties agree to exclude from jurisdiction the following work. Plumbing, electrical and the removing of built-up display crates in display areas; transportation; painting; and sign and pictorial preparation.

This contract was in effect from November 5, 1985, through July 31, 1988, with a "memorandum and agreement" modifying the terms and extending them through August 14, 1992. Carpenters contends that this memorandum extended the contract to include the overflow work at issue. One provision of the memorandum states:

4. Show Site Employees—Only those hired through the hall. \$12.00 per hr plus \$2.22 Fringes—Journeyman.

This is the only arguable reference to the work at issue.

Decorators does not have a written collective-bargaining agreement with Heritage. Decorators Business Manager Paschal Roberts testified that he had a verbal agreement with Heritage's president, M. H. H. (Dutch) Antonisse, "to work your people whether we have a signed agreement or not." According to Roberts, Antonisse agreed to continue using the employees represented by the Decorators just as it had in the past, i.e., that these employees would provide all the part-time labor Heritage needed to install conventions "all over the city of Dallas and Fort Worth." Roberts stated that Antonisse agreed to this in a telephone conversation late in 1982 or early in 1983, and again in 1985, shortly after a November 6, 1985 letter from Roberts to Antonisse asking Antonisse to sign a contract. Antonisse testified that Heritage's predecessor, I & M Displays, Inc., and the Decorators had a contract until 1980 or 1981 to exclusively use employees represented by the Decorators for trade show work in Dallas, but the parties have not had a written contract since then. Antonisse denied any later verbal agreement with Roberts to use the Decorators as an exclusive source for overflow work although he stated that

the parties have agreed on wages and how to handle checkoff.

From the above, we find that, although the Carpenters' contract arguably covers the work at issue, the memorandum does not clearly show that this work is indeed covered by the contract. No evidence was presented that Heritage has agreed to use the employees represented by the Carpenters exclusively for the overflow work at issue. Indeed, Heritage had in the past used employees represented by the Decorators to perform the work. There is no evidence that the Carpenters protested these assignments as a violation of its collective-bargaining agreement. As to the contention that the Carpenters' agreement was modified in 1989 to cover the overflow work, the Carpenters does not cite any provision in the modified agreement, and we find none, that supports that contention.

The undisputed evidence shows that Heritage and the Decorators have an oral arrangement as to what wage rates the employees referred by the Decorators are to be paid and for checkoff. There is, however, no undisputed evidence that Heritage has agreed to use these employees exclusively for the work at issue.

The Decorators and Carpenters each has an arguable claim that it has an agreement which covers the work. Without passing on the validity of these claims, we find that it is clear that neither has an agreement with Heritage which establishes that it has an exclusive right to the overflow work. Therefore, we find that this factor does not favor the award of the work to either group of employees.

2. Company preference, current assignment, and past practice

Steve Byford, Heritage's operations manager, testified that Heritage does not "really have preference rather than on an individual basis." Antonisse testified that Heritage wanted the right to select which employee group it would use based on its judgment as to the skills required to perform the job. Antonisse testified that the employees represented by the Carpenters are more qualified, especially with regard to the ability to do the more skilled labor, while the employees represented by the Decorators are able to do the less skilled "pipe and drape" part of the business.

As noted above, Heritage's April 4, 1991 assignment originally was to the employees represented by the Carpenters, and the carpenters did the work for about 1 hour. After the Decorators made its protest and threat to picket, Heritage removed the carpenters from the job. According to Langley, Fain then ordered employees from the Decorators.

Byford testified that "most of the time" in his 7 years' tenure with Heritage it has used employees represented by the Decorators for the overflow convention work in the Dallas-Fort Worth area. He further testi-

fied that the April 4, 1991 assignment was the first time Heritage used the employees represented by the Carpenters for this overflow work, "the first time we actually got them from the hall."

In view of the above, we find that Heritage has not expressed a clear-cut preference for either group of employees.² Heritage's original assignment of the work in dispute favors the employees represented by the Carpenters, but since Heritage abandoned that assignment after about 1 hour, the weight of that assignment is reduced. Finally, the evidence summarized above indicates that Heritage has used predominantly, if not exclusively, the employees represented by the Decorators for overflow work in the Dallas-Fort Worth area until the April 4, 1991 incident. Employer past practice strongly favors the award of the disputed work to employees represented by the Decorators.

3. Area and industry practice

As noted above, Heritage's past practice has been to use employees represented by the Decorators predominantly for overflow work in the Dallas-Fort Worth area and, with one exception, exclusively for overflow work in the Dallas Convention Center. Herb Kratz, executive secretary of the Carpenters, testified that one of Heritage's competitors, Giltspur Display, has called on the Carpenters hiring hall for overflow workers. He stated that the Carpenters has sent some employees to the Dallas Convention Center for Giltspur but did not recall how many. According to Langley, the Carpenters has supplied employees for overflow work a "very few times" over the years in the Dallas-Fort Worth area. Edward Almond, business representative for the Carpenters, testified that about half of the 200 journeymen on the hiring hall's work list had done installing and dismantling work at trade shows "all around," listing Dallas, Las Vegas, Chicago, and New York. Antonisse testified that he assumes that Heritage has called the Carpenters before for overflow trade show work but he had not done so personally. He recalled

² The Decorators contends and Wine testified that the show rules require that the independent contractors such as Heritage use employees represented by the Decorators for overflow work. At the hearing, the Decorators' counsel cited the show rule which states, "Full-time employees of exhibiting companies may erect and display their own displays." Wine explained that the contractors may use their own full-time regular employees but if overflow employees are needed they must be employees represented by the Decorators. (Freeman's collective-bargaining agreement with the Decorators forbids subcontracting that would result in the loss of employment to employees represented by the Decorators.) He testified that Freeman has a preference for the employees represented by the Decorators because it has a contract with the Decorators. Byford testified that, "I don't recall a show rule that says you have to use decorators."

We need not resolve the meaning of the show rules. The employees awarded the work will be in the employ of Heritage, not Freeman Decorating Company, and, therefore, it is the preference and collective-bargaining agreement of Heritage and not of Freeman that are relevant factors in the award of the work.

an incident in 1987 where the Decorators caused a shutdown of a Home Center Show because one of Heritage's competitors used employees represented by the Carpenters.

In its brief, the Carpenters states that "[a]lthough Painters [Decorators] have the predominate amount of jurisdiction in the Dallas area, it is by no means a complete jurisdiction." The above testimony indicates that the Carpenters has correctly described the Decorators' share of the disputed work in the Dallas-Fort Worth area as "predominate." The testimony on industry practice fails to show that either party predominates. We, therefore, find that the factor of area practice favors employees represented by the Decorators but that the factor of industry practice favors neither group of employees.

4. Relative skills

Both the employees represented by the Decorators and the employees represented by the Carpenters possess the requisite skills for performing the work in dispute. Both have apprenticeship programs that include training in installing and dismantling trade show exhibits. The journeymen of each union have completed the respective union's program and each union also refers employees in its apprenticeship program. The Decorators also refers temporary permit workers who have not been part of the apprenticeship program.

It is undisputed that Heritage has not had any problem with the skill of the journeymen or apprentices of the Decorators it has used in the past. Heritage has had problems with the skill level of the permit workers. Byford testified that in the preceding 24 months the Decorators has supplied permit workers who were unfamiliar with the job. However, Heritage has not communicated to the Decorators any discontent with these employees. On the other hand, it appears that the Decorators attempts to accommodate Heritage's requests for whatever employees the Decorators has available. According to Langley, the Decorators has had skilled employees available for its daily calls from 1982 until the present.

Antonisse testified that the employees represented by the Carpenters are more competent than the employees represented by the Decorators, especially with regard to the highly skilled part of installing and dismantling work, such as custom design exhibits and very large exhibits. However, in describing what he considered the lesser skill level of the employees represented by the Decorators, he referred only to the permit employees, i.e., those employees who have not received the training of the journeymen and apprentices. The Decorators attempts to accommodate Heritage's requests for employees of whatever specified skill level. Decorators' secretary, Carla Grady, testified that on all occasions Heritage has requested employees

since 1982 the Decorators had skilled employees available. Further, it appears that Heritage has not had much experience using the employees represented by the Carpenters for overflow work and therefore could not testify as to the comparative skill level of those employees. Thus, Byford stated that because these employees represented by the Carpenters only performed the work in dispute for about 1 hour on April 4, 1991, it was difficult to compare the skill level of the two groups of employees.

Based on the above, we conclude that both groups have the skill to perform the work in dispute and that this factor does not favor an award of the work to either group of employees.

5. Economy and efficiency of operations

Many of the employees represented by the Decorators have full-time jobs elsewhere. Byford and Bassey testified that this sometimes causes a problem with how many consecutive days an employee referred by the Decorators can work and that Heritage prefers that an employee continue until the job is completed. Although Antonisse testified that he has never had any problem with employees represented by the Carpenters finishing a job, his testimony fails to show that he has had any experience with employees represented by the Carpenters doing overflow work. Langley testified that the employees represented by the Decorators can arrange to be off their regular jobs for up to 3 weeks. She also stated that most of Freeman's out-of-town exhibits are done by employees who also work as firemen and that they adjust their schedules to travel with the exhibits. In addition, as noted above, the Decorators' attempts to comply with Heritage's requests for specific employees which presumably could include requesting an employee available for a certain duration or employees who do not have other full-time employment.

The evidence does not establish whether employees represented by the Carpenters for overflow work have been able to work until the job is completed.

We find this factor favors neither group of employees.³

6. Job impact

Roberts testified that if the employees represented by the Carpenters began doing overflow work at the Dallas Convention Center this would cause 50 employees represented by the Decorators to lose their jobs

³ We reject the Carpenters' assertion in its brief that the two unions' relative wage rates are relevant in the award of the work. See, e.g., *Painters Local 91 (Frank M. Burson)*, 265 NLRB 1685, 1687 (1982); *Mailers Local 17 (S. Rosenthal & Co.)*, 265 NLRB 1052, 1055 fn. 10 (1982). Neither do we find merit to the Carpenters' argument that its current representation of Heritage's regular shop employees favors an award of the work in dispute to employees it represents.

over the course of a year. In calculating this figure, Roberts included the loss of employment to these employees not only if Heritage started to use employees represented by the Carpenters but if Heritage's competitors also started using the employees represented by the Carpenters. Roberts explained that the competitors would follow suit if Heritage began to use employees represented by the Carpenters for overflow work.

Since the work in dispute is overflow work requiring a temporary expansion of Heritage's work force and not involving individuals regularly employed by Heritage, there is no loss of jobs involved—the only question is which group of employees will be assigned this extra work. Therefore, we find that this factor favors neither group of employees.

Conclusions

After considering all the relevant factors we conclude that employees represented by the Decorators are entitled to perform the work in dispute. The record shows that both Heritage's past practice and area practice favor the employees represented by the Decorators. The factor of assignment slightly favors the em-

ployees represented by the Carpenters but especially in view of the short duration of that assignment—about 1 hour—we find that that factor is outweighed by past and area practice.⁴ In making this determination, we are awarding the work to employees represented by the Decorators, not to the Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of Heritage Display Group of Houston, Inc., represented by Sign Painters, Decorators and Paintmakers, Union No. 756, are entitled to perform the overflow work related to the preparation, erection, dismantling, and preparation for shipment of exhibits at trade shows, conventions, fairs, and like or related activities in the Dallas, Texas area.

⁴ As noted in *Carpenters Local 1711 (Builders Assn. of Eastern Ohio)*, 207 NLRB 406, 409 (1973), the Board is reluctant to disturb area practice absent some compelling reason and an employer's assignment alone does not amount to such a compelling reason.